

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SUNGARD RECOVERY SERVICES, LP., :
a limited partnership, formerly know as :
SunGard Recovery Services Inc. :
1285 Drummers Lane :
Wayne, Pennsylvania 19807, :
:
Plaintiff :
:
Civil Action No. 02-CV-4445
v. :
:
:
DELTANET, INC. :
a California Corporation, :
100 First Street, Suite 2100 :
San Francisco, California 94105, :
:
Defendant. :
:

MOTION TO DISMISS

The Defendant, Deltanet, Inc., by its counsel, Nauman, Smith, Shissler & Hall, LLP, files the within Motion to Dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3) or in the alternative, to transfer the case to the

Middle District of Pennsylvania pursuant to 28 U.S.C.A. §1406(a), and avers as follows:

1. Deltanet, Inc. (Deltanet) is a California Corporation with its principal place of business in San Francisco, California.

2. The U.S. District Court for the Eastern District of Pennsylvania has no personal jurisdiction over Deltanet. 28 U.S.C. §1391(c). See Affidavit of J. Hoebeke attached hereto.

3. Deltanet does not reside in the Eastern District of Pennsylvania, nor does Deltanet do business in the Eastern District of Pennsylvania.

4. A “substantial part of the events or omissions giving rise to the claim” brought by the Plaintiff have not occurred within the Eastern District of Pennsylvania.

5. Deltanet, Inc. has an office located at 1 Delta Drive, Mechanicsburg, Pennsylvania, 17055, which is located the Middle District of Pennsylvania.

6. Thus, the Middle District of Pennsylvania is a district where the action could have originally been brought.

WHEREFORE, the Defendant, Deltanet, Inc., moves this Honorable Court to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(3) without

prejudice so that it may be filed in either the Northern or Eastern Districts of California or the Middle District of Pennsylvania; or in the alternative, transfer the case to the Middle District of Pennsylvania pursuant to 28 U.S.C.A. §1406(a).

NAUMAN, SMITH, SHISSLER & HALL, LLP

Craig J. Staudenmaier, Esquire
Supreme Court ID# 34996

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Supreme Court I.D. No.49618

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Counsel For: Deltanet, Inc.

Dated: August 14, 2002

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ORDER

AND NOW this _____ day of _____, 2002, upon consideration
of the Motion to Dismiss filed by Deltanet, Inc., said Motion is hereby GRANTED
and the above-captioned action is dismissed without prejudice.

BY THE COURT:

CERTIFICATE OF SERVICE

I hereby certify that on the date listed below I served a copy of the foregoing Motion to Dismiss by United States First Class Mail addressed to the party(ies) or attorney(s) of record at the address(s) listed below:

Rebecca D. Ward, Esquire
Laurence S. Shtasel, Esquire
Blank, Rome, Comisky & McCauley, LLP
One Logan Square
Philadelphia PA 19103

Penny A. Rogers, Legal Assistant to
Jodi A. Beierschmitt, Esquire

Dated: August 14, 2002